



# Decision

## Proposed acquisition of the assets of JT Insight by Sky Watch Limited (C-052)

Document No: JCRA 22/62

Date: 20 September 2022

Jersey Competition Regulatory Authority  
2<sup>nd</sup> Floor Salisbury House, 1-9 Union Street, St Helier, Jersey, JE2 3RF  
Tel 01534 514990

Web: [www.jcra.je](http://www.jcra.je)

## 1 Summary

- 1.1 Sky Watch Limited (**Sky Watch**) propose to acquire the assets of JT Insight, which operates in Jersey, from JT (Jersey) Limited (**JT**). The proposed transaction has been notified to the Jersey Competition Regulatory Authority (**the Authority**) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (**the 2005 Law**).
- 1.2 The Authority has determined that the proposed transaction will not lead to a substantial lessening of competition in any relevant market in Jersey and hereby approves the notified transaction.

## 2 The notified transaction

- 2.1 On 30 August 2022, the Authority received an application from Sky Watch for the proposed transaction. As a result of the proposed transaction, Sky Watch will acquire ownership of the website “JT Insight”, which is a local classifieds website.<sup>1</sup>
- 2.2 The Authority registered the application on its website with a deadline for comments of 12 September 2022. No submissions were received.

## 3 The parties

### Sky Watch

- 3.1 Sky Watch is a private company incorporated in Bermuda, with registration number 26326. Sky Watch is the parent company of Yabsta Limited (**Yabsta**), a Guernsey registered company with company number 60871. Yabsta provides a full range of traditional print media and digital services including advertisement design, directory services, copywriting, social media, web design, hosting, security, video and email marketing.
- 3.2 On Jersey, Yabsta currently provides directory services, both printed and online.<sup>2</sup> The acquisition of the directory services on Jersey was previously subject to approval by the Authority in Case M1396J in 2018.<sup>3</sup> As part of this previous transaction, the directory services were bought from JT, but this transaction did not include JT Insight.
- 3.3 With respect to the online services offered by Yabsta, these are delivered via the propriety Yabsta platform. Currently JT Insight (the target) is hosted on this platform and neither Yabsta or Sky Watch provides any classified services to Jersey.
- 3.4 For Sky Watch, the rationale for this transaction is because it has a great deal of expertise in these types of websites and management feels they can grow this website.

### JT

- 3.5 JT is a Jersey registered company with company number 83487. JT is the incumbent telecommunication provider in Jersey and provides fixed line telecommunication services in

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<sup>1</sup> See: <https://www.jtdirectory.com/classifieds>

<sup>2</sup> See: <https://www.jtdirectory.com/>

<sup>3</sup> See: <https://www.icra.je/cases/2018/m1396j-yabsta-jt-directory-services/>

Jersey and is 100% owned by the States of Jersey. JT provides mobile, fixed line, broadband, leased line telecommunication services and data centre services to consumers and businesses, and operates under a Class III licence issued by the Authority.

- 3.6 For JT, the rationale for the sale is that the JT Insight website is not part of their core business and revenues for the website are declining.

## JT Insight

- 3.7 JT Insight, is a local classifieds website that is hosted on the Yabsta platform. This website is self-provisioned, meaning that Jersey residents can upload pictures and text for items they are wanting to sell for a fee. The service is only available to Jersey residents and [redacted].

## 4 Requirement for Authority approval

- 4.1 Under Article 2(1)(b) of the 2005 Law, a merger or acquisition (**merger**) occurs where a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking. On completion of the proposed transaction, Sky Watch will acquire the assets of JT Insight. The notified transaction therefore constitutes a merger as defined by the 2005 Law.
- 4.2 According to Article 20(1) of the 2005 Law, a person must not execute certain mergers or acquisitions except and in accordance with the approval of the Authority. In particular, in relation to this transaction, Article 4 of the Order provides that where one or more of the parties to the proposed merger has an existing share of 40% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey, and if neither of the two exceptions apply<sup>4</sup>, then the merger must be notified to the Authority for approval under Article 20(1) of the 2005 Law.
- 4.3 According to information provided by the parties:
- Sky Watch, through Yabsta, has a share of supply of printed directory services of over 40%; and
  - neither of the exemptions to the requirement for Authority consent applies to Sky Watch in the Transaction.<sup>5</sup>
- 4.4 Therefore, the proposed acquisition requires the approval of the Authority prior to its execution.

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<sup>4</sup> The two exemptions are:

(a) the undertaking or undertakings being acquired has or have no existing share of the supply or purchase of goods or services of any description supplied to or purchased by persons in Jersey and otherwise owns or controls no tangible or intangible assets located in Jersey; or

(b) as regards the seller only, the 40% share of supply or purchase is not subject to the proposed merger or acquisition and provided that any non-competition, non-solicitation or confidentiality clauses included therein do not exceed a period of three years and are strictly limited to the products and services supplied by the undertaking being acquired.

<sup>5</sup> Exemption (b) applies to the seller, JT.

## 5 Market definition

### Approach

- 5.1 Under Article 22(4) of the 2005 Law, the Authority must determine if the merger would substantially lessen competition in Jersey or in any part of Jersey. As an initial step, the Authority will identify the markets which are likely to be affected by the merger since market definition provides a framework within which the competitive effects of a merger can be assessed.
- 5.2 When defining a market, the Authority may take note of its own previous decision-making practice and/or market definitions applied by other competition authorities. These previous decisions are not precedents and are not binding, either on the merging parties or on the Authority. Competition conditions may change over time, changing the market definition, and market definition will always depend on the prevailing facts.<sup>6</sup>

### Views of the parties

- 5.3 Sky Watch's view is that the approach to market definition should be consistent with the purpose of the JT Insight website, which is to host classified advertising for Jersey based clients. Supporting this, Sky Watch also note that JT Insight is the only service involved in the transaction and the key change is in the ownership and management of the website being moved from JT to Sky Watch.

### Authority consideration

- 5.4 The relevant product market is defined primarily by reference to the likely response of consumers and competitors.<sup>7</sup> It will comprise products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the product's characteristics, prices and intended use. An undertaking cannot have a significant impact on the prevailing conditions of a market if customers can easily switch to other service providers.
- 5.5 The Authority considers the precise market definition can be left open. This is because, as outlined below, the proposed transaction would not result in a substantial lessening of competition in Jersey on any reasonable basis.

## 6 Effect on competition

### Approach

- 6.1 After defining the relevant market, the Authority considers the respective market shares of the competitors in that market, both before and after the proposed transaction. These shares can

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<sup>6</sup> This approach is consistent with that taken under EU law – see, for example, Joined Cases T-125/97 and T-127/97 [2000] ECR II-01733, paragraphs 81-82. Article 60 of the 2005 Law requires the Authority to attempt to ensure that so far as possible questions arising in relation to competition are dealt with in a manner that is consistent with the treatment of corresponding questions arising under European Union law in relation to competition within the European Union.

<sup>7</sup> JCRA Guideline 7 – Market Definition.

be used as an indication of the overall level of market concentration which will be brought about as a result of the merger.

- 6.2 The analysis will consider whether the merger creates or enhances the ability or incentive to exercise market power, either unilaterally or in co-ordination with competitors, and whether other market forces (such as the entry of new competitors or countervailing power of customers) will eliminate this risk. The assessment will also consider any pro-competitive effects or efficiencies that may result from the merger.
- 6.3 For horizontal mergers, the Authority can assess two potential types of anti-competitive effects – unilateral effects (i.e. the ability of the merged entity to raise prices unilaterally) and co-ordinated effects (i.e. the ability of the merged entity to raise prices with either the implicit or explicit co-operation of other competitors). For vertical or conglomerate mergers, the Authority's focus will be on assessing whether the merged entity would have the ability or incentive to foreclose the market to competitors, either by denying access to important inputs upstream, or by denying access to 'routes to market' downstream. Another concern with conglomerate mergers is the ability to condition sales in a way that links products in separate markets together (through tying or bundling).
- 6.4 When assessing mergers, the Authority will have regard to the guidelines produced by the European Commission. It may also consider the substantive merger guidelines applied by the Competition and Markets Authority in the UK, as well as those of other competition authorities.

### Views of the parties

- 6.5 Sky Watch's view is there will be no impact on competition in Jersey. It estimates, based on management insight, that JT Insight's share is less than 1% of the overall online classified market in Jersey. Supporting this, it notes the role of larger players such as Facebook, Craigslist and Gumtree offering free services to Jersey consumers. There are also other paid options on Jersey, for example the Bailiwick Express.
- 6.6 Given this market context, Sky Watch's focus will be focus will be on providing high quality customer focused service.

### Authority consideration

- 6.7 There is no horizontal overlap between the activities of the Sky Watch and JT Insight. Since the parties do not currently compete in Jersey, the acquisition will not substantially lessen competition in this regard. The acquisition will also not give rise to anti-competitive foreclosure in Jersey since neither party is active in a market upstream or downstream of a market in which the other is active.
- 6.8 With respect to conglomerate effects, these could occur if the merged entity is able to use its market power in one market to foreclose competitors in another, for example by either by tying or bundling. In order to be able to foreclose competitors, the new entity must have a significant degree of market power, which does not necessarily equate to dominance. The effects are more likely to be substantial where at least one of the products is viewed by many customers as particularly important and there are few relevant alternatives for that product. There is also a

potential concern where customers tend to buy both products rather than just one of the products, and therefore the more demand may be affected through tying and bundling.

- 6.9 While it may be the case that there are links between the two markets where Sky Watch will be active in post-merger (directory services and online classifieds), Sky Watch will not be in a position to leverage any potential market power from one market to the other. This is because of the highly competitive nature of the online classifieds market. This is demonstrated by the very low estimated market share of JT Insight (<1%), primarily due to the prevalence of free services (Facebook, Craigslist, Gumtree). This means the transaction is unlikely to lead to any risk of anticompetitive foreclosure.
- 6.10 Therefore, based on the reasoning above, the proposed transaction will not give rise to a substantial lessening of competition on any reasonable basis.

## 7 Decision

- 7.1 On this basis, the Authority concludes that the proposed transaction will not substantially lessen competition in Jersey or any part of Jersey; and the transaction is therefore approved under Article 22(1) of the 2005 Law.

**20 September 2022**

**By Order of the Jersey Competition Regulatory Authority**